

it was their privilege to have reclaimed them when Bugg & Co. refused to pay the price as written by complainants, let us see what were their rights and duties, and what is the criterion of damage in such a case. They were bound to have taken just such steps as a reasonably prudent man would take to save himself had the mistake or error been his own. A man under such circumstances is not to be held to have done the wisest and best thing, but to the exercise of reasonable skill and diligence. Whether he so acted or not is a question of fact to be left to the jury under proper instructions by the court in a jury case, and for the court to try as any other questions of fact in chancery or non-jury cases. What would be prudent in one case might be very unwise in another, dependent on the character of the goods, the market value in the place to which sent by the mistake, or the value at the place from which sent, regard being had to storage, expense of selling, handling, freights, depreciation of perishable goods and fluctuations in the market, etc. For instance, in one case it might occasion less loss to sell at the price named in the message as erroneously delivered, where the cost and risk of storage and selling in that market would be heavier than the difference in the price as sent and the price as received, or the cost of returning the goods where the freight both ways might be more than such difference. Where the difference in the price as sent and the price as erroneously delivered was greater than would be the cost of such retaining and selling there with freight one way, or greater than returning with freights both ways, regard being had to the markets at the two places, then he ought not to sell at the price so named, but should retain or return, according to his best judgment. In such cases the courts will not be over nice, on behalf of the negligent company, in adjusting the scales to the wisdom of the several means open to the party injured, and undertake to weigh carefully the question as to what was best, as then appeared, and certainly not as to what was best as seen in the light of subsequent events, but will merely require the victim of the negligence to act in good faith in the exercise of ordinary prudence, in the

effort to extricate himself from the situation in which he has been placed. Where this has been done the loss resulting will be the measure of damages which he will be entitled to recover, upon the doctrine of compensation.

It is manifest that it would be unreasonable to expect the same conduct in a case where the goods shipped in consequence of the negligence of the company was lumber, coal, or the like, where freights would be a large factor in the loss, and in a case where the goods were bonds, diamonds, and the like, where freights are insignificant compared with value. Such considerations, together with the facilities for sale, proximity to other markets, and the like, are to be regarded in connection with the facts and circumstances of each particular case.

This is a summary of the result of general principles, all of which are too well settled to require citation of authority. Applying these principles to the case at bar, we find no proof in the record that would enable us to ascertain the damages fairly resulting from the negligence of the telegraph company. There is nothing to show what was the market value of the meat at Birmingham, nor at Memphis, unless the telegram as written by the sender is to be considered as fixing it. This is evidence of what the sender was willing to take for it, and in the absence of proof to the contrary may be said to furnish evidence of the market value in favor of the party making the offer, as against third parties. There is no proof as to freight either way, so that we cannot say whether the complainants have acted prudently in selling at the price named in the erroneous telegram, or whether they should have sought other purchasers at Birmingham, or recalled the meat to Memphis, or taken some other course. In the absence of some such proof it is impossible for the court to ascertain the extent of the injury inflicted by the company's negligence, so as to fix and determine the compensation therefor with certainty. But the negligence being established, and the complainants having shown that they disposed of the goods at the price named in the erroneously delivered message, which was one of the means open